

Application No. : 10/728,185
Filed : December 3, 2003

REMARKS

Claims 1 – 7, 18 – 23, 26, 27 and 30 – 49 were pending in the application. By this paper, Applicant has amended Claims 23 and 26. Accordingly, Claims 1 – 7, 18 – 23, 26, 27 and 30 – 49 are presented for examination herein.

§101 Rejections

1. Per page 2 of the Office Action, Claims 23 and 26 each stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

By this paper, Applicant has amended Claims 23 and 26 to include the term “*non-transitory*” in accordance with the Examiner’s suggestion. Accordingly, Applicant believes the aforementioned amendment corrects the alleged deficiency under 35 U.S.C. §101.

§112 Rejections

2. Per page 2 of the Office Action, Claims 27 and 30 each stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office alleges that the originally filed disclosure does not disclose a node comprising a computer readable medium which hold instructions to perform the features of the respective claims.

Applicant respectfully disagrees, noting that Claims 27 and 30 were both submitted when the Application was filed. Claim 27 as originally filed recited: “*A device connected to a serial bus, the device containing instructions which, when executed by a computer, administer a serial bus that facilitates communication between node devices*”; while Claim 30 as originally filed recited: “*A device connected to a serial bus, the device containing instructions which, when executed by a computer, administer a serial bus that facilitates communication between node devices*”. Applicant notes that the Original Claims may be used in establishing Applicant’s initial disclosure. **See for example MPEP § 608.01(I).**

While Claims 27 and 30 as originally filed do not explicitly recite a node device, Applicant notes that, for example at paragraph [0019] of Applicant’s specification as filed, the specification states: “*A node represents an electronic device(s) with an IEEE 1394 bus interface. A node device may comprise a computer, a digital camera, a digital video recorder, a DVD*

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player, or another type of device having a suitable bus interface.” Accordingly, one skilled in the relevant art would recognize that Applicant’s originally claimed “device” in Claims 27 and 30 as originally filed could also comprise a “node device”.

Therefore, for at least those reasons set forth above, Applicant respectfully submits that Claims 27 and 30 are each in compliance with the written description requirement of 35 U.S.C. § 112, first paragraph, and that their rejections should be withdrawn.

§103 Rejections

3. Per page 3 of the Office Action, Claims 1, 18, 20, 31, 38, 40, 43 and 49 each stand rejected under 35 U.S.C. §103 as being unpatentable over Hauck et al. (U.S. Patent No. 6,356,558, hereinafter “Hauck”) in view of Duckwall (U.S. Patent No. 5,495,481, hereinafter “Duckwall”). In response thereto, Applicant provides the following remarks:

Claims 1, 18, 31, 38, 43 and 49 – Per page 4 of the Office Action, each of independent Claims 1, 18, 31, 38, 43 and 49 were rejected over Hauck in view of Duckwall. Claims 1 and 18 each recite the element “*bogus ack packet*”; while Claims 31 and 43 recite the element “*false acknowledgement packet*”, and Claims 38 and 49 recite the element “*false response packet*”. The Office alleges that each of these recited terms is taught by the Duckwall ‘481 reference at Col. 6, lines 20 – 50. **See pages 10 – 11 of the Office Action.** Col. 6, lines 20 – 50 of Duckwall is reproduced in relevant part below:

“If a node determines that an acknowledge packet has been transmitted, repeated, or received, that node need not remain idle for the subaction gap time T_{sa} and may begin arbitration immediately.... According to the P1394 serial bus standard, acknowledge packets are eight bits long, wherein data packets are at least sixty-four bits long.... For one embodiment, if the counted number of bits for a packet is equal to eight, the node identifies that an acknowledge packet has been transmitted and immediately begins the arbitration phase of the next subaction....”

Accordingly, it appears that the Office is equating the terms “*bogus ack packet*”; “*false acknowledgement packet*”; and “*false response packet*” as used in Applicant’s claims with the teaching of an “*acknowledgement packet*” in Duckwall.

Applicant notes that during patent examination, the pending claims must be "*given their broadest reasonable interpretation consistent with the specification.*" {emphasis added} See, e.g. MPEP § 2111 and the Federal Circuit's *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005).

5 For the purposes of conciseness, only the limitation "*bogus ack packet*" is addressed herein; however, Applicant believes similar logic applies equally to the other recited claim limitations listed above. Applicant submits that the Office's interpretation of the term "*bogus ack packet*" as equating to the term "*acknowledge packet*" is entirely inconsistent (i) with not only the plain meaning of the term "*bogus ack*", but also (ii) with Applicant's specification as filed as
10 well, and accordingly constitutes a clearly erroneous interpretation by the Office.

As to element (i), the Office effectively reads out the term "bogus ack" entirely from the Claim(s) as part of his rejection. Random House Dictionary (2010) defines the term "bogus" as follows:

15 "*bo-gus*—adjective
1. not genuine; counterfeit; spurious; sham."

Hence, the Office has improperly equated the term "ack" with "bogus ack", failing to consider the meaning of the term "bogus" in any way (plain language or otherwise). As to
20 element (ii), paragraph [0026] of Applicant's specification as filed sets forth:

25 "*The bogus ack packet does not have to follow the prior-art convention that the second nibble is the complement of the first nibble. By not having a second nibble that is the compliment of the first nibble, the bogus ack packet causes the link hardware to filter it out so that it has no effect at that level. However, by definition in 1394, the PHY recognizes any 8-bit packet as an ack packet for the purposes of acceleration. Thus the present invention utilizes a packet that meets the requirements for recognition at one physical and/or transaction layer, but not at a different layer.*" {emphasis added}

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Accordingly, Applicant's specification as filed clearly differentiates and distinguishes from prior art "ack" (or acknowledgement) packets as taught by, *inter alia*, Duckwall. The two are *not* interchangeable, and use of a prior art "ack" packet in Applicant's claimed inventions to fulfill the function of the claimed "bogus" ack would render these inventions inoperable for their
35 intended purpose, in violation of MPEP 2143.01 ("If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no

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suggestion or motivation to make the proposed modification.” *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984)).

The Office’s interpretation is accordingly entirely inconsistent with Applicant’s specification as filed, as set forth above. The Office has completely and erroneously read the term “bogus” out of each of Applicant’s rejected claims.

Applicant therefore respectfully submits that the Office has committed clear error in rendering obvious Applicant’s Claim 1, 18, 31, 38, 43 and 49 inventions by interpreting Applicant’s claim language in a way that is both: (1) inconsistent with the plain meaning of the terms; and (2) inconsistent with Applicant’s specification as filed.

4. Per page 11 of the Office Action, Claims 23, 26, 27 and 30 each stand rejected under 35 U.S.C. § 103 as being unpatentable over Hauck, Duckwall and Henry et al. (U.S. Patent Publication No. 2004/0151153, hereinafter “Henry”). In response thereto, Applicant provides the following remarks:

Claims 23, 26, 27 and 30 – Per page 11 of the Office Action, Claims 23, 26, 27 and 30 were rejected in view of Hauck, Duckwall and Henry. Each of Claims 23, 26, 27, and 30 recite the element “*bogus ack packet*”. The Office alleges that this recited term is taught by the Duckwall reference at Col. 6, lines 20 – 50. See pages 16 – 17 of the Office Action. Col. 6, lines 20 – 50 of Duckwall was reproduced previously herein with regards to the discussion of Claims 1, 18, 31, 38, 43 and 49. Accordingly and as previously discussed, it appears that the Office is equating the terms “*bogus ack packet*” with Duckwall’s teaching of an “*acknowledgement packet*”.

Applicant again notes that during patent examination, the pending claims must be “*given their broadest reasonable interpretation consistent with the specification.*” {emphasis added} See, e.g. MPEP § 2111 and the Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005).

Applicant submits that the Office’s interpretation of the term “*bogus ack packet*” as equating with the term “*acknowledge packet*” is entirely inconsistent with not only (i) the plain meaning of the term “*bogus ack*”, but also (ii) with Applicant’s specification as filed as well,

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and accordingly constitutes a clearly erroneous interpretation by the Office. Paragraph [0026] of Applicant's specification as filed sets forth:

5 *"The bogus ack packet does not have to follow the prior-art convention that the second nibble is the complement of the first nibble. By not having a second nibble that is the compliment of the first nibble, the bogus ack packet causes the link hardware to filter it out so that it has no effect at that level. However, by definition in 1394, the PHY recognizes any 8-bit packet as an ack packet for the purposes of acceleration. Thus the present invention utilizes a packet that meets*
10 *the requirements for recognition at one physical and/or transaction layer, but not at a different layer."*{emphasis added}

Accordingly, Applicant's specification as filed clearly differentiates and distinguishes from prior art "ack" (or acknowledgement) packets as taught by, *inter alia*, Duckwall. The
15 Office's interpretation is accordingly entirely inconsistent with Applicant's specification as filed as set forth above. The Office has completely and erroneously read the term "bogus" out of each of Applicant's rejected claims. See e.g., page 11 of the Office Action.

Applicant therefore respectfully submits that the Office has committed clear error in rendering obvious Applicant's Claim 23, 26, 27 and 30 inventions by interpreting Applicant's
20 claim language in a way that is both: (1) inconsistent with the plain meaning of the terms; and (2) inconsistent with Applicant's specification as filed.

Other Remarks

Applicant hereby specifically reserves all rights of appeal (including those under the Pre-
25 Appeal Brief Program), as well as the right to prosecute claims of different scope in another continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a
30 position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.


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If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

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